

**REMARKS**

Claims 12-14 and 16-24 are pending in this application. The Office Action rejects claims 12-21 under 35 U.S.C. §103(a). By this Amendment, claim 12 is amended; and new claims 23 and 24 are added. Support for the amendment to claim 12 may be found in the present specification at, for example, Figs. 1-3. Support for new claim 23 may be found in the present specification at, for example, Figs. 1 and 2. Support for new claim 24 may be found in the present specification at, for example, Fig. 1. No new matter is added.

The courtesies extended to Applicants' representative by Examiner Mulvaney at the interview held April 16, 2009, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.

**I. Rejections under 35 U.S.C. §103(a)**

Claims 12-20 and 22 are rejected under 35 U.S.C. §103(a) as having been obvious over Nee (U.S. Patent No. 6,544,616) in view of either Park (U.S. Patent No. 6,379,767) or JP 03-165341. Claim 21 is rejected under 35 U.S.C. §103(a) as having been obvious over Nee in view of either Park or JP 03-165341, in further view of Takahashi (U.S. Patent No. 6,506,469). The rejections are discussed simultaneously herein because they depend on Nee and raise similar issues. Applicants respectfully traverse the rejections.

Applicants note that claim 15 was cancelled by the Amendment filed October 20, 2008. Therefore the rejection of claim 15 is moot.

Applicants respectfully submit that the applied references fail to teach or suggest all the features of amended independent claim 12. Specifically, the applied references at least fail to teach or suggest "an additional metal layer *in contact with* the rear face of the active layer." Instead, Nee teaches that a dielectric layer is located between the active layer and the

reflective layer. See Nee at Fig. 5, for example, where the dielectric layer (420) is between the active layer (418) and the reflective layer (422); see also Fig. 6.

Furthermore, the secondary references fail to cure this deficiency of Nee. Park and JP 03-165341 are cited merely for their teachings regarding the composition of an active layer. Office Action, page 2. Specifically, Park nowhere teaches or suggests an additional metal layer that is in contact with an active layer, because Park nowhere teaches an additional metal layer. For example, Park in Fig. 3 merely teaches a recording medium made up of a transparent transmission layer (10), a first recording layer (12), a second transparent transmission layer (14), and a second recording layer (16). Similarly, JP 03-165341 also nowhere teaches or suggests an additional metal layer that is in contact with an active layer. See JP 03-165341 Abstract and Fig. 2. Finally, Takahashi is cited merely for its teaching regarding the composition of an outerlayer. Takahashi nowhere teaches or suggests an additional metal layer that is in contact with an active layer. See Takahashi at Figs. 1-7 generally.

None of Nee or any of the secondary references provide any reason or rationale to provide an additional metal layer in contact with the rear face of the active layer, as claimed. That is, none of the references would have motivated one of ordinary skill in the art to modify Nee's recording medium by removing the required dielectric layer, with any reasonable expectation of success.

Additionally, Applicants also respectfully submit that none of the applied references teach or suggest the presently claimed feature "the inorganic material of the active layer is a tellurium and zinc alloy consisting of only an atomic percentage of between *60% and 70% of zinc* and between *30% and 40% of tellurium*." Instead, as the Office Action admits on page 3, Park and JP 03-165341 merely teach a 50-50 ratio.

Applicants respectfully submit that, under the law as described in MPEP 2144.05, such a teaching of a 50-50 ratio does not create a prima facie case of obviousness. Specifically, as described in MPEP 2144.05, the claimed range must "overlap or lie inside ranges disclosed by the prior art" in order for a prima facie case of obviousness to exist. Here, the ranges clearly do not overlap. Furthermore, the Office Action has *not* alleged that the ratio is a result-effective variable, such that it could be optimized through routine experimentation by a person having ordinary skill in the art. Applicants respectfully submit that this ratio is not a result effective variable. Therefore, Applicants respectfully submit that the Office Action's statements "Applicant is claiming a ratio of 60-40 to 70-30 which is not much of a deviation from the disclosed amounts in the references. Therefore, absence [sic] showing unexpected results, the variation is obvious" improperly uses hindsight to reconstruct the presently claimed invention from disparate teachings in the art using the present disclosure as a roadmap.

Accordingly, independent claim 12 would not have been obvious over the applied references for at least the reasons discussed above. Dependent claims 13-14 and 16-22 therefore also would not have been obvious for at least the reasons that independent claim 12 would not have been obvious.

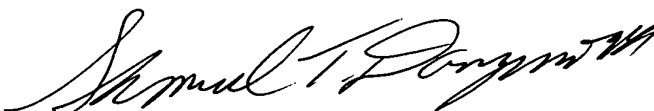
Reconsideration and withdrawal of the rejections are respectfully requested.

## **II. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:

Request for Continued Examination

Date: April 27, 2009

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